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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 MICHELE OGLINA, DERIVATIVELY  
19 AND ON BEHALF OF AMPIO  
20 PHARMACEUTICALS, INC.,

21 Plaintiff,

22 v.

23 MICHAEL MACALUSO, DAVID  
24 BAROR, PHILIP H. COELHO,  
25 RICHARD B. GILES, DAVID R.  
26 STEVENS, VAUGHAN L. CLIFT,  
27 MARK D. MCGREGOR, AND  
28 GREGORY A. GOULD,

Defendants,

And

AMPIO PHARMACEUTICALS, INC.,

Nominal Defendant.

Case No. 2:15-cv-5970-TJH-PJW

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF PLAINTIFF'S  
UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF  
SETTLEMENT**

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Plaintiff Michele Oglina (“Plaintiff Oglina”),<sup>1</sup> by and through her undersigned counsel, hereby submits this memorandum of points and authorities in support of her unopposed motion for preliminary approval of the settlement (the “Settlement”) of the above-captioned shareholder derivative action (the “*Oglina* Action”) brought on behalf of Ampio Pharmaceuticals, Inc. (“Ampio” or the “Company”).<sup>2</sup>

## I. INTRODUCTION

Plaintiff Oglina is pleased to inform the Court that after extensive, arm’s-length negotiations, the Parties to the Derivative Matters have agreed to the Settlement, which fully, finally, and forever resolves, discharges, and settles the Released Claims, while providing substantial benefits to Ampio and Ampio Shareholders. As a result of the initiation, prosecution, pendency and proposed Settlement of the *Oglina* Action and other Derivative Matters, Ampio will enact the valuable corporate governance reforms, which are attached as Exhibit A to the Stipulation (the “Reforms”). In addition, in recognition of the initiation, prosecution, pendency, and settlement of the Derivative Matters, which resulted in the Reforms, Defendants agree to direct their insurer to pay Plaintiffs’ Counsel’s agreed-to Fee and Expense Award of \$385,000 (the “Fee and Expense Award”). Stip at Section V.

The Settlement constitutes an appropriate resolution of litigation of substantial complexity and is within the range of possible approval, thereby satisfying the test courts typically employ in reviewing a settlement for preliminary approval. Accordingly, Plaintiff Oglina respectfully requests the Court to: (i) preliminarily approve the Settlement set forth in the Stipulation; (ii) approve the form of the

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<sup>1</sup> All capitalized terms not defined herein shall have the same definitions as set forth in the Stipulation of Settlement dated April 14, 2017 (the “Stipulation”) (attached as Exhibit 1 to this Motion). Citations to the Stipulation shall appear in the following format: Stip at \_\_\_\_.

<sup>2</sup> Pursuant to the Stipulation, this Settlement also intends to settle claims raised in the Shareholder Demand Letter and in the *Loyd* Action. Accordingly, within four (4) business days after the Final Judgment becomes Final, Plaintiff Loyd shall file the necessary documents to achieve the voluntary dismissal of the *Loyd* Action. Stip at 9-10. Collectively, the *Oglina* Action, *Loyd* Action, and Shareholder Demand Letter shall be referred to herein as the “Derivative Matters.”

1 Notice, and direct the publication of the Notice as contemplated by the Stipulation;  
 2 and (iii) schedule a hearing to entertain any objections by Ampio Shareholders and  
 3 to consider final approval of the Settlement (the “Final Hearing”).

## 4 **II. PROCEDURAL HISTORY OF THE DERIVATIVE MATTERS AND** 5 **THE PARTIES’ SETTLEMENT NEGOTIATIONS**

6 On August 6, 2015, Plaintiff Oglina commenced the *Oglina* Action in this  
 7 Court, which asserted claims derivatively on behalf of Ampio. Stip at 1. On  
 8 September 25, 2015, Plaintiff Patrick Loyd (“Plaintiff Loyd”) commenced the *Loyd*  
 9 Action against the Defendants in Colorado State Court, which likewise asserted claims  
 10 derivatively on behalf of Ampio related to the same facts as those alleged in the  
 11 *Oglina* Action. *Id.* Additionally, on May 8, 2015, Demand Shareholder Albert  
 12 Halegoua (“Demand Shareholder Halegoua” or the “Demand Shareholder”) issued the  
 13 Shareholder Demand Letter, which made certain demands upon the Defendants and  
 14 threatened to bring suit derivatively on behalf of Ampio regarding the same set of  
 15 factual circumstances that led to the filing of the *Oglina* Action and the *Loyd* Action.  
 16 *Id.*

17 In particular, the complaints in the Actions and the Shareholder Demand Letter  
 18 generally alleged or asserted that the Defendants breached their fiduciary duties, made  
 19 or permitted the making of material false statements or omissions, and committed  
 20 other violations of state law with respect to the STEP clinical trial for Ampion – a  
 21 biologic that Ampio was developing to treat osteoarthritis of the knee. Stip at 2. The  
 22 complaint in the *Oglina* Action alleged counts for breach of fiduciary duty, abuse of  
 23 control, gross mismanagement and unjust enrichment. *Id.* The complaint in the *Loyd*  
 24 Action alleged counts for breach of fiduciary duty, gross mismanagement and unjust  
 25 enrichment. *Id.* The Shareholder Demand Letter, among other things, demanded that  
 26 Ampio’s board of directors commence a civil action against Defendants to redress  
 27 their alleged breach of fiduciary duty. *Id.*

28 On September 22, 2015, the Court entered an order staying the *Oglina* Action  
 until the earlier of: (a) thirty days after written notice of termination had been

provided by any party in the action to all other parties in the action; (b) the related securities class action matters *Shiva Stein, et al. v. Ampio Pharmaceuticals, Inc., et al.*, Case No. 2:15-cv-3640 (C.D. Cal.) and *Guidano Napoli, et al. v. Ampio Pharmaceuticals, Inc., et al.*, Case No. 2:15-cv-3474 (C.D. Cal.) (collectively, the “Securities Class Action”) were dismissed with prejudice; or (c) any defendant in the Securities Class Action filed an answer. *Id.* On November 17, 2015, the Colorado State Court entered an order staying the *Loyd* Action under these same terms. *Id.* By letter dated October 17, 2015, the Demand Shareholder agreed to defer action with respect to the Shareholder Demand Letter under the same terms as well. *Id.*

On November 8, 2016, counsel for all Parties, including Plaintiff Loyd and Demand Shareholder Halegoua, attended an in-person all-day mediation session before Michele Yoshida of Phillips ADR (the “Mediator”). *Id.* The mediation was unsuccessful in producing a resolution of the Derivative Matters. Over the course of several weeks following the in-person mediation, however, with the substantial continued help of the Mediator, the Parties negotiated the corporate governance Reforms to be instituted by Ampio and other terms of the Settlement set forth in the Stipulation, except for the award of attorneys’ fees and expenses to Plaintiffs’ Counsel. *Id.* On December 19, 2016, the Parties hereto reached an agreement in principle to those terms of the settlement of the Derivative Matters. Stip at 3.

After reaching an agreement on the corporate governance Reforms, the Parties negotiated at arm’s length the Fee and Expense Award to be paid to Plaintiffs’ Counsel. *Id.* Following extensive discussions with the aid of the Mediator, on March 24, 2017, the Parties agreed to a “Mediator’s proposal” made by the Mediator with respect to attorneys’ fees and reimbursement of expenses to be paid to Plaintiffs’ Counsel, subject to the approval of the Court. *Id.*

### III. THE SETTLEMENT

As discussed above, the Parties, through their respective, highly experienced counsel and with the substantial assistance of the Mediator, have engaged in good-

1 faith and protracted arm's-length negotiations to resolve the Derivative Matters. Their  
 2 diligence and extensive discussions culminated in the Stipulation, which fully sets  
 3 forth the terms and conditions of the Settlement. As discussed above, as a result of  
 4 the initiation, prosecution, pendency, and proposed Settlement of the Derivative  
 5 Matters, Ampio's board of directors will adopt by resolution, or other means as  
 6 appropriate, the corporate governance reforms set forth in Exhibit A to the Stipulation.  
 7 Most notably, the Reforms call for the Company to create a "Disclosure  
 8 Committee," which is designed, *inter alia*, to assist and report to the Company's  
 9 chief executive officer and chief financial officer in establishing, implementing,  
 10 maintaining and evaluating controls or other procedures that are designed to ensure  
 11 that the Company disseminates accurate and truthful statements in its public  
 12 disclosures. *See* Stip, Exhibit A. The Reforms, thus, directly address the allegations  
 13 made in the Derivative Matters that the Defendants made and/or caused the  
 14 Company to make false and misleading statements to the investing public. The  
 15 Reforms also include mandatory training of Company employees and directors, and  
 16 improvements to the Company's system for reporting illegal or unethical behavior.  
 17 *Id.*

#### 18 **IV. ARGUMENT**

##### 19 **A. The Role of the Court in the Approval of a Derivative Settlement**

20 There is a strong policy favoring compromises that resolve litigation,  
 21 "particularly in class actions and other complex cases where substantial judicial  
 22 resources can be conserved by avoiding formal litigation." *In re GMC Pick-Up Truck*  
 23 *Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995). The "[s]ettlements of  
 24 shareholder derivative actions are particularly favored because such litigation "is  
 25 notoriously difficult and unpredictable." *Cohn v. Nelson*, 375 F. Supp. 2d 844, 852  
 26 (E.D. Mo. 2005) (citations omitted).

27 Federal Rule of Civil Procedure 23.1 ("Rule 23.1") governs a district court's  
 28 analysis of the fairness of a settlement of a shareholder derivative action. *In re Pac.*



1 *Enterprises Sec. Litig.*, 47 F.3d 373, 377 (9th Cir. 1995). Under Rule 23.1, a  
 2 derivative action “may be settled, voluntarily dismissed, or compromised only with  
 3 the court’s approval. Notice of a proposed settlement, voluntary dismissal, or  
 4 compromise must be given to shareholders or members in the manner that the court  
 5 orders.” Fed. R. Civ. P. 23.1(c).

6 The Ninth Circuit has provided factors which may be considered in evaluating  
 7 the fairness of a class action settlement:

8 The district court’s ultimate determination will necessarily involve a  
 9 balancing of several factors which may include, among others, some or  
 10 all of the following: the strength of plaintiffs’ case; the risk, expense,  
 11 complexity, and likely duration of further litigation; the risk of  
 12 maintaining class action status throughout the trial; the amount offered in  
 settlement; the extent of discovery completed, and the stage of the  
 proceedings; the experience and views of counsel; the presence of a  
 governmental participant; and the reaction of the class members to the  
 proposed settlement.

13 *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). As  
 14 Rules 23 and 23.1 of the Federal Rules of Civil Procedure both require court approval  
 15 for the compromise of class and derivative actions, the factors laid out for determining  
 16 whether to approve a class action settlement are also applicable to derivative  
 17 settlements. See Alba Conte and Herbert B. Newberg, 4 Newberg on Class Actions §  
 18 22:109 (4th Ed. 2002); see also *Shlensky v. Dorsey*, 574 F.2d 131, 147 (3d Cir. 1978)  
 19 (“While in *Girsh v. Jepsen* we discussed the necessity of considering such factors in  
 20 determining the fairness of the settlement of a class action in order to protect the rights  
 21 of absent members of the class of plaintiffs, it is clear that the same factors are  
 22 relevant in a shareholder’s derivative suit”).

23 The district court must exercise “sound discretion” in approving a settlement.  
 24 *Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980), *aff’d*, 661 F.2d  
 25 939 (9th Cir. 1981); *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir.  
 26 1993). Therefore, in exercising its discretion, “the court’s intrusion upon what is  
 27 otherwise a private consensual agreement negotiated between the parties to a lawsuit  
 28 must be limited to the extent necessary to reach a reasoned judgment that the

1 agreement is not the product of fraud or overreaching by, or collusion between, the  
2 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and  
3 adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625. The Ninth Circuit  
4 defines the limits of the inquiry to be made by the court in the following manner:

5 Therefore, the settlement or fairness hearing is not to be turned into a trial  
6 or rehearsal for trial on the merits. Neither the trial court nor this court is  
7 to reach any ultimate conclusions on the contested issues of fact and law  
8 which underlie the merits of the dispute, for it is the very uncertainty of  
9 outcome in litigation and avoidance of wasteful and expensive litigation  
that induce consensual settlements. The proposed settlement is not to be  
judged against a hypothetical or speculative measure of what *might* have  
been achieved by the negotiators.

10 *Id.* (emphasis in original).

11 **B. The Court Should Preliminarily Approve the Settlement and**  
12 **Consider Final Approval After Notice is Provided to Ampio**  
13 **Shareholders**

14 At the Final Hearing, the Court will have before it detailed papers submitted in  
15 support of the Settlement and will be asked to make a determination as to whether the  
16 Settlement is fair, reasonable, and adequate and in the best interest of those whose  
17 claims will be extinguished. While Plaintiff Oglina (and Plaintiff Loyd and Demand  
18 Shareholder Halegoua) believe that the Settlement merits this Court’s final approval,  
19 at this time Plaintiff Oglina respectfully requests only that the Court grant preliminary  
20 approval of the Settlement. To grant preliminary approval, the Court need only  
21 conclude that the Settlement of the claims against the Defendants is “within the range  
22 of possible approval” to preliminarily approve the Settlement for the purposes of  
23 providing notice and holding a future fairness hearing.<sup>3</sup>

24 <sup>3</sup> As the *Manual for Complex Litigation* explains:

25 If the preliminary evaluation of the proposed settlement does not disclose  
26 grounds to doubt its fairness or other obvious deficiencies, such as  
27 unduly preferential treatment of class representatives or of segments of  
28 the class, or excessive compensation for attorneys, and appears to fall  
within the range of possible approval, the court should direct that notice  
under Rule 23(e) be given to the class members of a formal fairness  
hearing, at which arguments and evidence may be presented in support of  
and in opposition to the settlement.

1 Plaintiff Ogline respectfully submits that this Court may easily find that the  
2 Settlement is “within the range of possible approval.” As a threshold matter, the  
3 Settlement was reached after extensive arm’s-length negotiations between and among  
4 counsel for the Plaintiffs and the Defendants with the substantial assistance of the  
5 Mediator, and provides substantial benefits to the Company and Ampio Shareholders  
6 while eliminating the expense, risk, and delay inherent in such complex litigation,  
7 including the very real risk of no recovery. Moreover, the Company approved the  
8 Settlement only after determining that the Settlement of the Derivative Matters under  
9 the terms set forth in the Stipulation, including the institution of the Reforms, benefits  
10 the Company. Under these circumstances, Plaintiff Ogline respectfully submits that  
11 the Settlement is “within the range of possible approval” and should be preliminarily  
12 approved.

13 Further, reference to some of the factors considered by courts in granting final  
14 approval of derivative and class action settlements lends support to Plaintiff Ogline’s  
15 belief that the Settlement should not only be preliminarily approved, *i.e.*, is within the  
16 range of possible approval, but also should be finally approved after Notice is  
17 provided to Ampio Shareholders. *Officers for Justice*, 688 F.2d at 625. In  
18 determining whether a settlement is fair, courts focus on whether the settlement was  
19 reached as a result of good faith bargaining at arm’s length without collusion. *See In*  
20 *re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991). As discussed above, each  
21 element of the Settlement was extensively negotiated between experienced counsel  
22 with a firm understanding of the strengths and weaknesses of the claims and defenses  
23 asserted, is the product of significant give and take by the Parties, and was reached  
24 only after extensive negotiations between counsel for the Plaintiffs, the Demand  
25 Shareholder, and the Defendants, all with the substantial assistance of the Mediator.

26 An evaluation of the benefits of a settlement must also be tempered by  
27 recognition that any compromise involves concessions on the part of all of the settling  
28

1 parties. Indeed, “the very essence of a settlement is compromise, ‘a yielding of  
2 absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688 F.2d at 624  
3 (citations omitted). Although Plaintiffs and the Demand Shareholder believe that the  
4 claims asserted in the Derivative Matters were meritorious, liability was by no means  
5 a foregone conclusion. Had Plaintiffs and the Demand Shareholder continued to  
6 litigate, there was a risk that they would not have been successful at the motion to  
7 dismiss stage of their respective actions.

8 Even if Plaintiffs and/or the Demand Shareholder were successful and survived  
9 the motion to dismiss stage, continued litigation would be extremely complex, costly,  
10 and of substantial duration. Document discovery would need to be completed,  
11 depositions would need to be taken, experts would need to be designated, and expert  
12 discovery conducted. Ampio and the Defendants’ expected motions for summary  
13 judgment would have to be briefed and argued, and if defeated, then a trial would  
14 have to be held. Indeed, significant risks remained in getting past Ampio and the  
15 Defendants’ anticipated motions for summary judgment and obtaining a favorable  
16 judgment after trial. Even if liability were established, the amount of recoverable  
17 damages would still have posed significant issues and would have been subject to  
18 further litigation. The Settlement eliminates these and other risks of continued  
19 litigation, including the very real risk of no recovery after several more years of  
20 litigation, while providing Ampio and Ampio Shareholders substantial benefits. *See*  
21 *Officers for Justice*, 688 F.2d at 625.

22 It is also clear that even a victory at trial is no guarantee that the judgment  
23 would ultimately be sustained on appeal or by the trial court. For example, in *In re*  
24 *Apollo Group, Inc. Sec. Litig.*, No. CV 04-2147-PHX-JAT, 2008 U.S. Dist. LEXIS  
25 61995 (D. Ariz. Aug. 4, 2008), the court, on a motion for judgment as matter of law,  
26 overturned a jury verdict of \$277 million in favor of shareholders based on  
27 insufficient evidence presented at trial to establish loss causation. Add to these post-  
28 trial and appellate risks, the difficulty and unpredictability of a lengthy and complex

1 trial – where witnesses could suddenly become unavailable or the fact-finder could  
2 react to the evidence in unforeseen ways – and the benefits of the Settlement become  
3 all the more apparent.

4 Significant weight also should be attributed to the belief of experienced counsel  
5 that settlement is in the best interest of those affected by the settlement. *Officers for*  
6 *Justice*, 688 F.2d at 625. Plaintiffs, the Demand Shareholder, Ampio, and the  
7 Defendants have independently considered the Settlement and all agree that it is in the  
8 best interests of Ampio and Ampio Shareholders. Stip at 3. Here, Plaintiffs’ Counsel  
9 has extensive experience in the area of shareholder representative litigation. As a  
10 result of extensive experience in these types of cases, Plaintiffs’ Counsel has a unique  
11 insight into the legal and factual issues presented. In particular, Plaintiffs’ Counsel  
12 used that expertise and experience to effectively and efficiently prosecute the  
13 Derivative Matters and reach an outstanding result for Ampio and Ampio  
14 Shareholders.

15 In addition to the terms of the Settlement being fair, adequate, and reasonable,  
16 the negotiated and agreed-to Fee and Expense Award to be paid to Plaintiffs’ Counsel  
17 is reasonable. In recognition of the initiation, prosecution, pendency, and settlement  
18 of the Derivative Matters, which resulted in valuable corporate governance  
19 enhancements -- the Reforms, Ampio and Defendants have agreed that Plaintiffs’  
20 Counsel be paid a Fee and Expense Award of \$385,000 for Plaintiffs’ Counsel’s  
21 attorneys’ fees and expenses by the Defendants’ insurer. Stip at Section V. Here,  
22 counsel for Plaintiffs, the Demand Shareholder, and Ampio and the Defendants  
23 negotiated the Fee and Expense Award after the principal terms of the Settlement  
24 were reached. Stip at 3. The Fee and Expense Award was agreed-upon only with the  
25 substantial assistance of the Mediator, after several more months of negotiations. *Id.*  
26 These negotiations resulted in a Fee and Expense Award that is consistent with the  
27 benefits conferred upon Ampio and Ampio Shareholders. The United States Supreme  
28 Court has endorsed this type of consensual resolution of attorneys’ fees issues in these

1 kinds of cases as the ideal toward which litigants should strive. *Hensley v. Eckerhart*,  
2 461 U.S. 424, 437 (1983) (“A request for attorney’s fees should not result in a second  
3 major litigation. Ideally, of course, litigants will settle the amount of a fee.”); *Ingram*  
4 *v. Coca-Cola Co.*, 200 F.R.D. 685, 695 (N.D. Ga. 2001) (where, as here, there is no  
5 evidence of collusion and no detriment to the parties, the court should give  
6 “substantial weight to a negotiated fee amount.”).

7 Finally, in connection with final approval of the proposed Settlement, Plaintiffs’  
8 Counsel will seek Court approval for case contribution awards in the amount of  
9 \$2,500 each as compensation to Plaintiffs and the Demand Shareholder for their time,  
10 effort and service as representative plaintiffs/claimant in the Derivative Matters (the  
11 “Service Awards”). The Service Awards shall be deducted from the Fee and Expense  
12 Award to the extent approved by the Court. It is well settled that “[c]ourts routinely  
13 approve incentive awards to compensate named plaintiffs for the services they  
14 provided and the risks they incurred during the course of the class action litigation.”  
15 *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 400 (D.D.C. 2002);  
16 *In re McKesson HBOC, Inc. ERISA Litig.*, 391 F. Supp. 2d 844, 851 (N.D. Cal. 2005)  
17 (approving \$5,000 incentive awards); *In re Paypal Litig.*, No. C-02-1227-JF PVT,  
18 2004 WL 2445244, at \*1 (N.D. Cal. Oct. 13, 2004) (approving \$2,500 incentive  
19 awards).<sup>4</sup>

20 Accordingly, for all of the foregoing reasons, Plaintiff Oglina respectfully  
21 submits that preliminary approval of the Settlement should be granted.

## 22 **V. NOTICE**

23 Plaintiff Oglina seeks Court approval of the form and manner of the Notice,  
24 attached to the Stipulation as Exhibit B-1. The Stipulation provides that Ampio  
25 shall cause a copy of the Notice to be filed with the Securities and Exchange  
26 Commission (the “SEC”) on Form 8-K; with a copy of the full Stipulation attached to  
27

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28 <sup>4</sup> Plaintiffs’ Counsel only currently seek approval to notify Ampio Shareholders in the  
Notice of the proposed Service Awards at this time.



1 the Form 8-K. Stip at 9. The Notice provides information relating to: (i) the  
2 Settlement terms; (ii) the date of the Final Hearing; and (iii) the protocol for Ampio  
3 Shareholders to follow to comment upon the proposed Settlement.

4 Rule 23.1 does not require individual notice of a shareholder derivative  
5 settlement, as is required for a class action, but rather provides for notice only “in  
6 the manner that the court orders,” thus affording the Court substantial discretion.  
7 Because no individual claims are at stake, and because a direct notice program  
8 would be so costly as to swallow up the benefits of most derivative settlements,  
9 notice of dismissal of derivative settlements under Rule 23.1 by publication only is  
10 appropriate. Thus, the form and manner of the proposed Notice to Ampio  
11 Shareholders constitutes the best notice practicable under the circumstances and  
12 satisfies the requirements of Rule 23.1, due process, and any other applicable law.  
13 *Carlough v. Amchem Prods., Inc.*, 158 F.R.D. 314, 323 (E.D. Pa. 1993) (“notice by  
14 publication may be the principal means for informing [shareholders] of their ...  
15 rights”) (citing *Manual Complex Litigation* (Third), *supra*, §30.211, at 221).

## 16 **VI. SCHEDULING OF EVENTS**

17 Plaintiffs’ Counsel propose the following schedule for the publication of the  
18 proposed Notice, the filing of submissions in support of final approval of the  
19 Settlement, the timing regarding any objections by Ampio Shareholders and any  
20 response(s) thereto, and the Final Hearing. This schedule is similar to those used and  
21 approved by courts in derivative settlements and provides due process to Ampio  
22 Shareholders with respect to their rights concerning the Settlement.

Event	Time for Compliance
Deadline for filing the Notice on Form 8-K with the SEC	Not later than ten (10) calendar days following the entry of the Preliminary Approval Order
Deadline for filing of papers in support of the final approval of Settlement and the Fee and Expense Award	At least twenty-eight (28) calendar days prior to the Final Hearing
Deadline for any objections by Ampio shareholders to the Settlement to be filed with the Court	At least twenty-one (21) calendar days prior to the Final Hearing
Deadline for filing of any response to objections, if any, by Ampio Shareholders	At least seven (7) calendar days prior to the Final Hearing
Final Hearing date	Fifty-five (55) calendar days after entry of the Preliminary Approval Order, or later at the Court's convenience

## VII. CONCLUSION

Given the benefits the Settlement provides to Ampio and Ampio Shareholders, Plaintiff Oglina respectfully requests the Court to: (i) preliminarily approve the proposed Settlement; (ii) approve the form and manner of the Notice and direct the publication of the Notice; and (iii) schedule the Final Hearing.

Dated: April 14, 2017

Respectfully submitted,  
THE BROWN LAW FIRM, P.C.  
Timothy W. Brown  
Robert C. Moest

By: /s/ Timothy W. Brown  
Timothy W. Brown (*Pro Hac Vice*)

*Counsel for Plaintiff*